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***Attachment H - Financing Bid Package***

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## ***Attachment H – Financing Bid Package***

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## REQUEST FOR PROPOSAL

**RFP REFERENCE:** Customer Name

**RFP DATE:** Date

**RFP CLOSING DATE:** Date

**ESCO - CONTACT:** Name, Address, Phone, Fax, E-mail

### Notice to Firms

Invitations are extended for proposals using the attached proposal format

**SCOPE OF REQUEST:** Provide pursuant to a tax-exempt lease purchase agreement with Customer financing for energy and water savings measures for those certain facilities located at the Customer's campus.

PROPERLY COMPLETED RESPONSES WILL INCLUDE:

1. a signed and dated proposal letter in the format included
2. a redlined copy of the Model Lease Contract With Explanation of Any Changes proposed thereto
3. a signed and completed signature sheet
4. a schedule of payments and amortization schedule including any purchase options
5. escrow information (contact, Escrow Agreement and List of All Fees)

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## Proposal Information

### Specific Terms

lessee:	BOARD OF CUSTOMER
Lessor:	THE PROVIDER OF THE FINANCING OR A MUTUALLY AGREEABLE NOMINAL LESSOR
Contract:	A MODEL LEASE CONTRACT BETWEEN LESSOR AND THE CUSTOMER. EACH FIRM IS REQUIRED TO REVIEW AND COMMENT ON THE MODEL LEASE CONTRACT, ATTACHED HERETO AS ATTACHMENT A. THE EXTENT AND CONTENT OF THOSE COMMENTS WILL BE IMPORTANT TO THE EVALUATION OF THE PROPOSALS. IF ANY CHANGES IN THE MODEL LEASE CONTRACT ARE PROPOSED, SUCH CHANGES MUST BE SPECIFICALLY IDENTIFIED IN THE PROPOSAL AND ALTERNATE LANGUAGE SET FORTH IN THE PROPOSAL. ALSO, ANY CHANGES SHOULD BE ACCOMPANIED WITH AN EXPLANATION CLARIFYING THE PROPOSED CHANGE.
Security:	THE LESSOR WILL BE SECURED BY THE CUSTOMER'S OBLIGATION TO PAY THE LEASE PAYMENTS, WHICH ARE SUBJECT TO ANNUAL APPROPRIATIONS AND BY A SECURITY INTEREST IN THE EQUIPMENT PURCHASED FOR THE ENERGY AND WATER SAVINGS MEASURES TO BE INSTALLED BY ESCO, WHICH CAN BE SALVAGED WITHOUT DAMAGE TO THE FACILITY TO WHICH SUCH EQUIPMENT IS ATTACHED.
Interest Rate:	A FIXED RATE OF INTEREST FOR THE TERM OF THE FINANCING. THE PROPOSAL SHOULD INCLUDE THE RELEVANT INDEX AND SPREAD ALONG WITH THE PERIOD OF TIME THE PROPOSED FIXED INTEREST IS COMMITTED
Prepayment:	THE FINAL TAX-EXEMPT LEASE PURCHASE AGREEMENT SHALL INCLUDE CERTAIN PREPAYMENT PROVISIONS PURSUANT TO A SCHEDULE TO BE AGREED TO BY THE PARTIES

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Assignment:	THE LESSOR MAY ASSIGN ITS RIGHTS TO RECEIVE LEASE PAYMENTS AND ITS SECURITY INTEREST IN THE EQUIPMENT INSTALLED PURSUANT TO THE ENERGY PERFORMANCE CONTRACT BUT ONLY WITH THE ADVANCE WRITTEN CONSENT OF THE CUSTOMER. EACH ASSIGNMENT MUST SPECIFICALLY MENTION THE CUSTOMER'S RIGHTS REGARDING PREPAYMENT.
Amendment:	THE CUSTOMER RESERVES THE RIGHT TO AMEND THE MODEL LEASE CONTRACT THAT IS ENTERED INTO PURSUANT TO THIS REQUEST FOR PROPOSAL. ANY SUCH AMENDMENT WILL BE IN WRITING AND SUBJECT TO THE MUTUAL CONSENT OF BOTH PARTIES.
Cost:	THE PROPOSAL SHOULD IDENTIFY SPECIFICALLY ALL COSTS ASSOCIATED WITH THE TRANSACTION, IF ANY, THAT WOULD BE AN OBLIGATION OF THE CUSTOMER AS EITHER A DIRECT PAYMENT OR AS ADDITIONAL PROJECT COSTS FOR PURPOSE OF DETERMINING THE FUNDED LEASE AMOUNT AND/OR ONGOING LEASE PAYMENT OBLIGATION. THESE COSTS MUST BE ALL-INCLUSIVE AND MAY INCLUDE COMMITMENT FEES, LEGAL COUNSEL, TRUSTEE FEES AND ANY OTHER COSTS. THE MODEL LEASE AGREEMENT DOES NOT REQUIRE THE CUSTOMER TO PAY ANY SUPPLEMENTAL FINANCING COSTS, EITHER DIRECT (UPFRONT) OR AS AN ADDITION TO THE PROJECT COST.
Requirement of ESCO:	THE PROPOSAL SHALL IDENTIFY SPECIFICALLY ANY REQUIREMENTS TO BE IMPOSED UPON ESCO AS A RESULT OF THIS FINANCING.
Requirement of Lender:	THE LESSEE WILL AGREE THAT LESSOR WILL BEAR THE RISK OF LOSS IF THE EQUIPMENT IS DAMAGED OR DESTROYED, AND TO PAY LEASE PAYMENTS FROM FUNDS AVAILABLE FOR THAT PURPOSE, WHEN AND IF APPROPRIATED BY THE STATE LEGISLATURE.

### **Conditions to Proposal**

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Cost of Preparing

Proposal:

THE COST OF DEVELOPING AND SUBMITTING THE PROPOSAL IS ENTIRELY THE RESPONSIBILITY OF THE FIRMS SUBMITTING A RESPONSE TO THIS REQUEST FOR PROPOSAL. THIS INCLUDES, BUT IS NOT LIMITED TO, COSTS TO DETERMINE THE NATURE OF THE ENGAGEMENT, PREPARATION OF THE PROPOSAL, SUBMITTING THE PROPOSAL, NEGOTIATING FOR THE CONTRACT AND OTHER COSTS ASSOCIATED WITH THIS REQUEST FOR PROPOSAL.

No Oral or Implied

Contracts:

THERE SHALL BE NO ORAL OR IMPLIED CONTRACTS RELATING THIS REQUEST FOR PROPOSAL.

Acceptance or

Rejection:

THE CUSTOMER RESERVES THE RIGHT TO SELECT, ACCEPT OR REJECT ANY OR ALL PROPOSALS OR PART OF A PROPOSAL; TO WAIVE ANY INFORMALITIES OR TECHNICALITIES; CLARIFY ANY AMBIGUITIES IN PROPOSALS; MODIFY ANY CRITERIA IN THIS REQUEST FOR PROPOSAL; AND ESTABLISH FINANCING AT ANY TIME.

Contract:

THE SUCCESSFUL FIRM WILL BE REQUIRED TO ENTER INTO A TAX-EXEMPT LEASE PURCHASE AGREEMENT WITH THE CUSTOMER.

THE TAX-EXEMPT LEASE PURCHASE AGREEMENT SHALL BE SUBSTANTIALLY IN THE FORM SET FORTH ON ATTACHMENT A (MODEL LEASE CONTRACT). EACH FIRM IS REQUIRED TO PROVIDE COMMENTS AND SPECIFIC ALTERNATE LANGUAGE FOR THOSE ITEMS IN THE MODEL LEASE CONTRACT FROM WHICH THE FIRM WISHES TO DEVIATE.

Contract Documents:

THIS REQUEST FOR PROPOSAL AND ANY AMENDMENTS AND THE RESPONSE AND ANY AMENDMENTS OF THE SUCCESSFUL FIRM SHALL BECOME A PART OF THE WRITTEN CONTRACT, WHICH SHALL COMPOSE OF THE COMPLETE UNDERSTANDING OF THE PARTIES.

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IN THE EVENT A CONFLICT IN TERMS OF LANGUAGE AMONG THE DOCUMENTS, THE FOLLOWING ORDER OF PRECEDENCE SHALL GOVERN:

1. WRITTEN MODIFICATIONS TO THE EXECUTED CONTRACT;
2. TAX-EXEMPT LEASE PURCHASE AGREEMENT SIGNED BY THE PARTIES;
3. THIS REQUEST FOR PROPOSAL, INCLUDING ANY AND ALL ADDENDA

Contract Formation: NO CONTRACT SHALL BE CONSIDERED TO HAVE BEEN ENTERED INTO BY THE CUSTOMER UNTIL ALL STATUTORILY REQUIRED SIGNATURES AND CERTIFICATIONS HAVE BEEN RENDERED AND A WRITTEN CONTRACT HAS BEEN SIGNED BY THE SUCCESSFUL FIRM.

Open records Act: ALL PROPOSALS BECOME THE PROPERTY OF THE CUSTOMER. STATE STATUTE REQUIRES ALL INFORMATION CONTAINED THE PROPOSALS BECOME OPEN FOR PUBLIC REVIEW ONCE A CONTRACT IS SIGNED OR ALL PROPOSALS ARE REJECTED.

Submission of Proposals: A COPY OF THE FIRM'S PROPOSAL SHALL BE RECEIVED ON OR BEFORE TIME, DATE, ADDRESSED AS FOLLOWS:

NAME, ADDRESS

RESPONSES VIA EMAIL OR FACSIMILE WILL BE ACCEPTED PROVIDED THAT SUCH RESPONSE INCLUDES ALL OF THE REQUISITE INFORMATION.

PROPOSALS RECEIVED PRIOR TO THE CLOSING DATE SHALL BE KEPT SECURED UNTIL CLOSING. THE CUSTOMER SHALL NOT BE RESPONSIBLE FOR THE PREMATURE OPENING OF A PROPOSAL OR FOR THE REJECTION OF A PROPOSAL THAT WAS NOT RECEIVED PRIOR TO THE CLOSING DATE.

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Signature of Proposals: EACH PROPOSAL SHALL GIVE THE COMPLETE MAILING ADDRESS OF THE FIRM AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE WITH HIS OR HER NAME AND LEGAL TITLE TYPED BELOW THE SIGNATURE LINE.

Acknowledgement of Addenda: ALL FIRMS SHALL ACKNOWLEDGE RECEIPT OF ANY ADDENDA TO THIS REQUEST FOR PROPOSAL BY ORIGINAL SIGNATURE WITH HIS OR HER NAME AND LEGAL TITLE TYPED BELOW THE SIGNATURE LINE. EACH PROPOSAL SHALL INCLUDE THE FIRM'S SOCIAL SECURITY NUMBER OR FEDERAL EMPLOYER IDENTIFICATION NUMBER.

Modification of Proposal: A FIRM MAY MODIFY A PROPOSAL BY WRITTEN NOTIFICATION AT ANY TIME PRIOR TO THE CLOSING DATE. ANY MODIFICATIONS RECEIVED AFTER THE CLOSING DATE SHALL NOT BE ACCEPTED.

Withdrawal of Proposal: A PROPOSAL MAY BE WITHDRAWN ON WRITTEN REQUEST FROM THE FIRM TO THE REPRESENTATIVE DESIGNED ABOVE.

Proposal Disclosures: AT THE TIME OF CLOSING, ONLY THE NAMES OF THE FIRMS WHO SUBMITTED PROPOSALS SHALL BE MADE AVAILABLE TO THE PUBLIC. NO INTEREST RATE INFORMATION WILL BE RELEASED UNTIL THERE IS AN AWARD AND CONTRACT.

Notice of Award: AN AWARD IS MADE ON THE EXECUTION OF THE WRITTEN CONTRACT BY THE ALL PARTIES. ONLY THE **CUSTOMER** IS AUTHORIZED TO ISSUE NEWS RELEASES RELATING TO THIS REQUEST FOR PROPOSAL, ITS EVALUATION, AWARD AND/OR PERFORMANCE OF THE TAX-EXEMPT LEASE FINANCING.

Prohibition of Gratuities: NEITHER THE SUCCESSFUL FIRM NOR ANY PERSON, FIRM OR CORPORATION EMPLOYED BY THE SUCCESSFUL FIRM IN THE PERFORMANCE OF THIS CONTRACT SHALL OFFER OR GIVE ANY GIFT, MONEY OR ANYTHING OF VALUE OR ANY PROMISE OF



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FUTURE AWARD OR COMPENSATION TO ANY CUSTOMER  
EMPLOYEE AT ANY TIME.

Third Party Beneficiaries: THIS REQUEST FOR PROPOSAL AND RESULTING TAX-EXEMPT  
LEASE PURCHASE AGREEMENT SHALL NOT BE CONSTRUED AS  
PROVIDING AN ENFORCEABLE OBLIGATION TO ANY THIRD  
PARTY.

No Liability: THE CUSTOMER SHALL HAVE NO LIABILITY, OBLIGATION NOR  
SHALL IT BE COMPELLED TO ENTER INTO ANY TAX-EXEMPT  
LEASE PURCHASE AGREEMENT OR ANY OTHER FINANCING  
ARRANGEMENT AS A RESULT OF ISSUING THIS REQUEST FOR  
PROPOSAL.

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For RFPs for Local Governments:

Disregard this Financing Lease Contract. Submit a lease-purchase agreement that meets Colorado State Statutes and is approved by Colorado bond counsel.

Department or Agency Number
Contract Routing Number

## LEASE CONTRACT

**THIS CONTRACT** is made this Day of Monthth day of Month, Year (the "Agreement"), by and between the Customer Name (State of Colorado) for the use and benefit of the Department Name, hereinafter referred to as Customer Abbreviated Name "State", or "Lessee" and Financing Company Name, hereinafter referred to (together with its successors or assigns) as "Lessor."

*Note: This contract is customized for State use. Change reference of "State" as needed.*

### FACTUAL RECITALS

Authority exists in the Law, and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Agreement; and

Required approval, clearance and coordination has been accomplished from and with appropriate Agencies; and

The Lessor has been selected competitively for the purpose of entering into a financing lease for the Energy Conservation Measures provided by the ESCO Name (the "Vendor") under separate contract (the "**Energy Performance Contract**"); and

The Lessor, in accordance with the **Financing Request for Proposal (RFP)**, incorporated herein, promises to lease for the period specified below, the "energy conservation measures" or "energy measures", consisting of equipment, systems, and associated services, described in detail in the following document(s):

"**Exhibit A**" –Energy Conservation Measures

"**Exhibit B**" – Schedule of Payments

"**Exhibit C**" –RFP and Lessor's Response to the RFP

"**Exhibit D**"--Form of Escrow Agreement

The State agrees to lease the energy measures and features listed on Exhibit A, and the Lessor, by its acceptance of this Agreement, agrees to lease the said energy measures subject to the terms and conditions contained herein, and in **Exhibits A, B, C and D**, incorporated and attached herein; and

State hereby warrants and represents that it has complied with the provisions of all applicable State of Colorado statutes, rules and regulations in order to enter into this Agreement with Lessor to provide for the leased energy measures; and

The rent hereunder represents fair market rental for the use of the energy measures.

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**NOW THEREFORE**, it is hereby agreed that

1. In consideration of **State's** promises hereinafter made, the Lessor agrees to lease the energy conservation measures to the **State** in accordance with the terms and provisions of this Agreement and the terms and conditions set forth in the following exhibits which are attached hereto, incorporated herein and all of which are made a part of this Agreement by reference as is fully set forth and is herein after referred to as "Agreement":

**EXHIBIT A:** Energy Conservation Measures

**EXHIBIT B:** Schedule of Payments

**EXHIBIT C:** RFP and Lessor's Response to the RFP

**EXHIBIT D:** Form of Escrow Agreement

2. **Representations:** Lessee represents and warrants that (a) it has the statutory power to enter into and perform its obligations under this Agreement and any Exhibits hereto; (b) this Agreement and any Exhibits hereto have been duly authorized and executed and upon delivery will be valid, legal and binding agreements of Lessee, enforceable in accordance with their terms; (c) the Equipment will be used for the essential governmental purpose of conserving energy.
3. **Selection and Use of Energy measures:** Lessee agrees that it shall be responsible for the selection and use of and results obtained from the energy measures and any other associated equipment, programs or services.
4. **Warranties:** Lessor agrees, to the extent they are assignable, to assign to Lessee any and all warranties made available by the manufacturer of the energy measures, which consist of equipment or system, suppliers, or provider of services. Lessor will forward to Lessee all applicable warranty notices. Lessor warrants that neither Lessor nor anyone acting or claiming through Lessor, by assignment or otherwise, will interfere with Lessee's quiet enjoyment of the use of the energy measures so long as no event of default shall have occurred and continues. EXCEPT FOR LESSOR'S WARRANTY OF QUIET ENJOYMENT, LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO LESSOR, LESSEE LEASES THE ENERGY MEASURES 'AS IS'. NOTWITHSTANDING THE INDEMNIFICATION OBLIGATION IN PARAGRAPH 3 OF THE SPECIAL PROVISIONS, THE LESSOR SHALL HAVE NO LIABILITY FOR, NOR SHALL LESSEE HAVE ANY REMEDY AGAINST LESSOR FOR, CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS OR SAVINGS, LOSS OF USE, PATENT OR COPYRIGHT INFRINGEMENT OR ANY OTHER COMMERCIAL LOSS.

EXCEPT AS PROVIDED IN THE EVENT OF NONAPPROPRIATION OR IN SPECIAL PROVISION 7 IN SECTION 29, THE RENTAL PAYMENTS SHALL BE ABSOLUTE AND UNCONDITIONAL AND WILL NOT BE SUBJECT TO SETOFF, DEFENSE, COUNTERCLAIM, OR RECOUPMENT FOR DEFECTS IN THE LEASED EQUIPMENT OR SYSTEM, OR DEFECTS IN OR BREACH OF PERFORMANCE OBLIGATIONS OF THE VENDOR OR SUPPLIER SELECTION AND SUPPLYING THE EQUIPMENT OR SYSTEM.

Lessor and Lessee agree that Special Provision 7 in Section 29 applies only to amounts owed to the **State** by Lessor or any assignee of Lessor and not to amounts owed to the **State** by any other person or entity.

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5. **Term:** This Agreement shall be effective upon approval by the state controller or his designee, or on a date specified in this Agreement, whichever is later. Subject to an Event of Nonappropriation as described in **Section 24**, the term of this Agreement shall commence on the latter date of the approval by the state controller or when the Performance contract with ESCO Name is effective and end on the last day of the Number of Years Financedth year per the schedule of payments in **Exhibit B** or when the State exercises its option to prepay per **Section 28**.
6. **Inspection; Marking; Financing Statements:** Upon request, Lessee shall make the equipment and its maintenance records available for inspection by Lessor during Lessee's normal business hours. Lessee shall affix to the Equipment any labels indicating security interest supplied by Lessor.
7. **Use of Equipment:** Lessee agrees that the equipment will be operated by competent, qualified personnel in accordance with applicable operating instruction, laws and government regulations. Lessee will agree to not move the equipment or system from the location noted in this Agreement, or an alternate operating location necessary because of relocation of the state program requiring use of the equipment or system, without the prior written consent of lessor, which consent shall not be unreasonably withheld.
8. **Maintenance/Repair:** Lessee, at lessee's own cost and expense, will keep the equipment or system in good repair, condition and working order, ordinary wear and tear excepted. Unless otherwise agreed in this Agreement, the lessor shall have no obligation to repair or maintain the system or equipment. All replacement parts and repairs at any time made to the equipment or system shall become the property of lessor.
9. **Alterations; Modifications; Parts:** Lessee may, with lessor's prior written consent, which shall not be unreasonably withheld, make such alterations, modifications or additions to the equipment or system as lessee may deem desirable in the conduct of its business, provided the same shall not diminish the value or utility of the equipment or system. Any alterations are to be removed, and the Equipment restored to its normal, unaltered condition, eligible for manufacturer maintenance service, at Lessee's expense, prior to its return to Lessor. At Lessee's option, any field installable upgrade, feature, addition or accessory added to any item of Equipment (Modification) may be removed, provided such Modification is of the same manufacture as the Equipment. Otherwise, the Modification must be removed, and the Equipment restored to its original unaltered condition as specified below.
- If such alteration or Modification is removed, the Equipment shall be restored at Lessee's expense to its normal, unmodified condition. If not removed, upon return of the Equipment such alteration or Modification shall become, without charge, the property of Lessor free of all encumbrances. Restoration will include replacement of the original parts removed in connection with the installation of an alteration or Modification. Any part installed in connection with warranty or maintenance service shall be the property of Lessor.
10. **Leases for Modifications:** Upon Lessee's request, Lessor may, at Lessor's option, arrange for the leasing of additions or Modifications to the Equipment which are made by or for the original manufacturer, under terms and conditions then generally in effect. Additions are defined as machines, or one-time charges associated with the Equipment. Any lease for Modifications shall expire at the same time as this Agreement. The Rent therefore shall be determined by Lessor and specified in the documents evidencing the leasing of such additions or Modifications. If Lessee prepay the Equipment, Lessee shall simultaneously prepay any Modifications attached thereto.
11. **Return of Equipment:** Upon expiration or termination of this Agreement for any item of Equipment, other than termination upon payment in full of the scheduled payments set forth on **Exhibit B** or upon prepayment pursuant to **Section 28** hereof, or upon demand by Lessor pursuant to **Section 18-**

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Remedies, Lessee shall promptly return the Equipment, freight prepaid, to a location in the continental United States specified by Lessor. Lessee shall pay any costs and expenses to de-install and remove the Equipment. Any parts removed in connection therewith shall become Lessor's property.

12. **Casualty Insurance; Loss or Damage:** Lessee will either self-insure or maintain all risk commercial property policy with replacement cost coverage, at its own expense, covering loss of or damage to the Equipment (but excluding any Modifications not subject to a lease with Lessor and any alterations not approved by Lessor). If any item of Equipment shall be lost, stolen, destroyed or irreparably damaged by any cause whatsoever (Casualty Loss) before the date of installation, this Agreement shall not cover that item of Equipment. If any item of Equipment suffers a Casualty Loss, or is otherwise damaged, on or after the date of installation, Lessee shall promptly inform the Lessor. If Lessee determines that the item can be economically repaired, Lessee shall place the item in good condition and working order and pay the reasonable cost of such repair. Should any Equipment be destroyed, damaged beyond repair, lost, stolen, or taken by governmental action (any such event is an "Event of Loss"), Lessee shall promptly notify Lessor, and at Lessee's option either:
- (a) replace such Equipment with equivalent or newer Equipment which shall then become subject to this Agreement; or
  - (b) pay to lessor the total of unpaid rental payments for the current fiscal year of lessee plus the Purchase Price set forth on **Exhibit B**.

Lessee determination regarding the reparability of a damaged item and notification to Lessor shall be performed within a commercially reasonable time. The **State** will provide a certificate of insurance naming the Lessor as loss payee, if requested.

13. **Liability Insurance.** At its own expense and in accordance with 24-30-1501, et seq. C.R.S., **State** shall provide evidence of a satisfactory self-insurance program in the amounts and in accordance with the Colorado Government Immunity Act, 24-10-101, et seq., C.R.S., as amended, for public liability, self-insurance coverage, only to the extent of the available coverage. Upon Lessor's request **State** shall provide Lessor with a certificate of such self-insurance. Such coverage shall be for the duration of this Agreement, and the amount of the coverage will be in accordance with the requirements of the aforementioned-referenced statutes. Any provisions of this Agreement, whether or not incorporated herein by reference, shall be controlled and limited by these statutes.
14. **Taxes.** It is hereby recognized and acknowledged by the Lessor that the **State** of Colorado is tax-exempt and is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local government tax authority. The **State of Colorado's FEIN # is 84-730123K**. The **State of Colorado tax exemption number is 98-02565**. The **State** is also not liable for any taxes of the Lessor for franchise or related to the income of the Lessor. The parties to this Master Lease contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment should be exempt from all property taxes. If the use, possession or acquisition of the Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the term of this Agreement.
15. **Sublease and Relocation of Equipment; Assignment by Lessee:** Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may sublet the Equipment or relocate it from the Equipment Location, provided that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes in the

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opinion of Gilmore & Bell, P.C. or other counsel recognized in the area of tax exempt municipal obligations. No sublease or relocation shall relieve Lessee of its obligations under this Agreement. In no event shall Lessee remove the Equipment from the United States. Lessee shall not assign, transfer or otherwise dispose of this Agreement or Equipment, or any interest therein, or create or suffer any levy, lien or encumbrance thereon except those created by Lessor.

16. **Assignment by Lessor:** Lessee acknowledges and understands that the terms and conditions of this Agreement have been fixed to enable Lessor to sell or assign its interest or grant a security interest in this Agreement and the Equipment individually or together, in whole or in part, for the purpose of securing loans to Lessor or otherwise. No such assignment shall be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee shall promptly acknowledge receipt thereof in writing and shall keep, or cause to be kept, a record of all such notices. Each assignee shall have all of the rights of Lessor under this Agreement. Except as authorized under Special Provisions number 7, Lessee shall not assert against any assignee any set-off, defense, right to indemnification or counterclaim that Lessee may have against Lessor or any other person. Lessor shall not be relieved of its obligation hereunder as a result of any assignment unless Lessee expressly consents thereto, except as authorized by CRS 24-30-202, as stated in the Special Provisions, included herein.
17. **Default; No Waiver:** Lessee shall be in default under this Agreement upon the occurrence of any one of the following events: (a) Lessee fails to pay, except as provided for in Article 24, when due any amount required to be paid by Lessee under this Agreement and such failure continues for a period of fourteen days after the due date; (b) Lessee fails to comply with any other provisions under this Agreement or violates any of the covenants or representations made by Lessee in this Agreement, or Lessee fails to perform any of its obligations under any other lease entered into pursuant to this Agreement, and such failure or breach continues for a period of 15 days after written notice is received by Lessee from Lessor, (c) Lessee violates any of the covenants or representations made by Lessee in any agreement with respect to the Equipment or fails to perform any provision in any such agreement; (d) Lessee misrepresents any aspect of its credit worthiness or financial condition. Any failure of Lessor to require strict performance by Lessee, or any waiver by Lessor of any provision in this Agreement shall not be construed as a consent to or waiver of any other breach of the same or of any other provision.
18. **Remedies:** If either party is in default under this Agreement, the other party shall have the right, in its sole discretion to exercise any one or more of the following remedies in order to protect its interests, reasonably expected profits and economic benefits.

Lessor may (a) declare this Agreement to be in default; (b) terminate this Agreement; (c) accelerate and recover from Lessee any and all amounts then due and to become due to the end of the then current fiscal period of Lessee; (d) take possession of any or all items of Equipment, wherever located, without demand, notice, court order or any other process of law; and (e) demand that Lessee return any or all such items of Equipment to Lessor and, for each day that Lessee fails to return any item of Equipment, Lessor may demand an amount equal to the Rent, prorated on the basis of a 30 day month, in effect immediately prior to such default. Upon repossession or return of such items of Equipment, Lessor shall sell, lease or otherwise dispose of such items in a commercially reasonable manner with or without notice and on a public or private bid, and apply the net proceeds thereof toward the amount due under this Agreement, but after deducting (i) in the case of a sale, the estimated fair market value of such items as of the scheduled expiration of this Agreement; or (ii) in the case of a lease, the rent due for such items for any period beyond the scheduled expiration of this Agreement; and (iii) in either case, all expenses, including but not limited to legal fees incurred in connection herewith. Any excess net proceeds are to be retained by Lessor. Either party may pursue any other remedy available at law or in equity, including but not limited to seeking damages, specific performance and injunctive relief. No right or remedy is exclusive of any other right or remedies herein or those permitted by law or

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- equity. All such rights and remedies shall be cumulative and may be enforced concurrently or individually from time to time.
19. **Personal Property:** The Equipment is and shall at all times be and remain personal property; notwithstanding that the Equipment, or any part thereof, may be or hereafter become in any manner, affixed or attached to, embedded in, permanently rested upon real property or any building thereon, or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.
20. **Notices; Administration:** Service of all notices under this Agreement shall be sufficient if delivered personally or mailed to Lessee or to Lessor at the addresses set forth at the end of this Agreement. Notice by mail shall be effective when deposited in the United States mail, duly addressed and with postage prepaid. All payments hereunder shall be made to Lessor, at the above address, until Lessor notifies Lessee otherwise.
21. **Entire Agreement, Non-Waiver, and Severability.** This Agreement contains the entire agreement and understanding between Lessee and Lessor relating to the subject matter hereof. No agreements or understandings shall be binding on the parties hereto unless set forth in writing and signed by the parties. Lessor acknowledges that any financial obligation of the State shall not be deemed valid until it has been approved by the state controller or such assistant as the State controller may designate. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term. This Agreement may be amended or supplemented only in writing signed by Lessor and Lessee.
22. **Rent Commencement Date:** The Rent Commencement Date, unless otherwise specified on **Exhibit B**, shall be the date on which Lessor deposits funds sufficient, together with earnings thereon, to pay the Vendor for the energy conservation measures pursuant to the Energy Contract into an escrow fund established under an Escrow Agreement substantially in the form attached hereto as **Exhibit D**. The Rent shall be based on the Lease Rate specified in **Exhibit C**, which is not subject to change. Rent will be invoiced in advance and will be due on the dates set forth on **Exhibit B**. Interest portions of Rent Payments will be calculated on the basis of a year of 365 days, actual days elapsed.
23. **Rental Payments:** Rent for the Lease Term shall be set forth on **Exhibit B**, with the first Rental Payment due in the month following the month in which the Rent Commencement Date occurs, on the same day of the month. As set forth on **Exhibit B**, a portion of each Rental Payment is paid as, and represents payment of, interest. Total payments amounts for the entire term of the lease and monthly terms are as set forth in **Exhibit B**. If any portion of a Rental Payment is received by Lessor or its assignee later than the payment date set forth therefor on **Exhibit B**, Lessee shall pay Lessor, on demand, as a late charge, the greater of \$25.00 or 10% of such overdue amount, limited however to the maximum amount allowed by applicable law.
24. **Fiscal Funding:** The Lessor understands and agrees that this Agreement is contingent upon the continuing availability of funds as provided in the second paragraph of the Special Provisions hereinafter set forth, and that the State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The State contracts to acquire by purchase the Equipment and services described in this Agreement and has reason to believe that sufficient funds will be available for the full term of this Agreement. Where, for reasons beyond the State's control, its funding entity does not allocate funds for any fiscal period beyond the one in which this Agreement is entered into, the State has exhausted all efforts to obtain funds legally available for future fiscal periods, and the State's failure to obtain funds does not result from any act or failure to act on the part of the State, this

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Agreement shall be terminated without penalty and the State will not be obligated to make the payments remaining beyond the state's then current fiscal period. The State shall notify the Lessor in writing of such non-allocation of funds (an "Event of Nonappropriation") as soon as the State shall reasonably know of such non-allocation, and if possible, prior to the effective date of termination.

The Lessor understands and agrees that the obligation of the State to pay the charges due under this Agreement constitutes a current expense of the State payable exclusively from the State's funds and shall not in any way be construed to be a general obligation of indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provision of sections 1, 2, 3, 4, or 5 of Article XI of the Colorado Constitution or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the State, nor the Lessor acting on the State's behalf, has pledged the full faith and credit of the State or any agency or department thereof to the payment of the charges due under this Agreement, and this Agreement shall not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payment of any charge due under this Agreement.

25. **Title:** During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall be retained by Lessor, except for those modifications that are added to the Equipment by Lessee and that may be removed without damaging the Equipment. Upon the occurrence of an event of default hereunder or upon termination of this Agreement upon an Event of Nonappropriation pursuant to **Section 24** hereof, Lessee will surrender possession of the Equipment to Lessor. Lessee agrees to the filing of financing statements with respect to the security interest created under this Agreement, and, if requested by Lessor, Lessee will take reasonable steps to identify property indicating Lessor's security interest. Lessee covenants and agrees that the Equipment is, and will at all times remain, personal property, regardless of its use or the manner of its attachment to realty. Lessee represents and covenants for the benefit of Lessor that the Equipment is free and clear of any encumbrance and lien created by Lessee other than the lien created by this Agreement. Upon payment in full of the Rental Payments set forth on **Exhibit B** or prepayment pursuant to **Section 28**, the Lessor shall have no further interest in the energy conservation measures and shall take such measures as may be necessary to transfer title to Lessee.
26. **UCC and other documents and filings.** To secure the payment of all of Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Property and on all additions, attachments, accessions and substitutions thereto. Lessee authorizes Lessor to file such additional documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignees of Lessor, in the Property. Notwithstanding any provision of this Agreement to the contrary, if Lessor fails to pay all or any part of the purchase price of the Property, Lessee reserves the right to pay such deficiency and credit any amounts paid against Lease Payments due Lessor or any assignee of Lessor under this Agreement.
27. **Controlling Order of Contract Documents:**
- A. The parties' agreement in each case consists of this Agreement, including the Special Provisions in **Section 29** below, plus the following documents, all of which are incorporated herein by reference:
    - (1) The terms and provisions of this Agreement, including the Special Provisions;
    - (2) The terms and conditions of any attached and incorporated exhibits to this Agreement.
  - B. In the event of any conflict between the provisions of this Agreement and the provisions of any of its exhibits, attachments, or addenda, the provisions of this Agreement shall supersede, govern,



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and control, except as specifically provided herein. **State** purchase orders or amendments and their respective accompanying supplements shall supersede, govern and control over Lessor attachments, exhibits, or addenda in the event of any conflict between them.

- C. Unless the context otherwise requires (*e.g.*, to resolve a conflict), the term "Agreement" includes all exhibits, addenda, supplements referenced and incorporated herein and both terms refer to the entire agreement between the parties.
28. **Prepayment.** Upon 30 days prior written notice, Lessee shall have the right to exercise an option to prepay all, but not part, of the Rental Payments on any Rental Payment Date upon payment of all amounts then due plus the Purchase Price set forth on **Exhibit B**.
29. **Special Provisions:** The Special Provisions in this **Section 29** are hereby incorporated and become a part of this Agreement. For purposes of the following Special Provisions, "Contractor" shall have the same meaning as Lessor, and "Contract" shall have the same meaning as Agreement.

**1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)**

THIS AGREEMENT SHALL NOT BE DEEMED VALID UNTIL IT HAS BEEN APPROVED BY THE CONTROLLER OF THE STATE OF COLORADO OR SUCH ASSISTANT AS HE MAY DESIGNATE.

**2. FUND AVAILABILITY. CRS 24-30-202 (5.5)**

FINANCIAL OBLIGATIONS OF THE **STATE OF COLORADO** PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE.

**3. INDEMNIFICATION.**

THE LESSOR SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS THE **STATE**, ITS EMPLOYEES AND AGENTS, AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITY AND COURT AWARDS INCLUDING COSTS, EXPENSES, AND ATTORNEY FEES INCURRED AS A RESULT OF ANY ACT OR OMISSION BY THE LESSOR, OR ITS EMPLOYEES, AGENTS, SUBLESSORS, OR ASSIGNEES PURSUANT TO THE TERMS OF THIS AGREEMENT.

**4. INDEPENDENT CONTRACTOR. 4 CCR 801-2**

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE **STATE**. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE **STATE** PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE **STATE** DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE **STATE** TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE **STATE**) AND UNEMPLOYMENT

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COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

**5. NON-DISCRIMINATION.**

THE LESSOR AGREES TO COMPLY WITH THE LETTER AND THE SPIRIT OF ALL APPLICABLE STATE AND FEDERAL LAWS RESPECTING DISCRIMINATION AND UNFAIR EMPLOYMENT PRACTICES.

**6. CHOICE OF LAW.**

THE LAWS OF THE STATE OF COLORADO AND RULES AND REGULATIONS ISSUED PURSUANT THERETO SHALL BE APPLIED IN THE INTERPRETATION, EXECUTION, AND ENFORCEMENT OF THIS CONTRACT. ANY PROVISION OF THIS CONTRACT, WHETHER OR NOT

INCORPORATED HEREIN BY REFERENCE, WHICH PROVIDES FOR ARBITRATION BY ANY EXTRA-JUDICIAL BODY OR PERSON OR WHICH IS OTHERWISE IN CONFLICT WITH SAID LAWS, RULES, AND REGULATIONS SHALL BE CONSIDERED NULL AND VOID. NOTHING CONTAINED IN ANY PROVISION INCORPORATED HEREIN BY REFERENCE WHICH PURPORTS TO NEGATE THIS OR ANY OTHER SPECIAL PROVISION IN WHOLE OR IN PART SHALL BE VALID OR ENFORCEABLE OR AVAILABLE IN ANY ACTION AT LAW WHETHER BY WAY OF COMPLAINT, DEFENSE, OR OTHERWISE. ANY PROVISION RENDERED NULL AND VOID BY THE OPERATION OF THIS PROVISION WILL NOT INVALIDATE THE REMAINDER OF THIS CONTRACT TO THE EXTENT THAT THE CONTRACT IS CAPABLE OF EXECUTION.

AT ALL TIMES DURING THE PERFORMANCE OF THIS AGREEMENT, THE LESSOR SHALL STRICTLY ADHERE TO ALL APPLICABLE FEDERAL AND STATE LAWS, RULES, AND REGULATIONS THAT HAVE BEEN OR MAY HEREAFTER BE ESTABLISHED.

**7. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4**

PURSUANT TO CRS 24-30-202.4 (AS AMENDED), THE **STATE CONTROLLER** MAY WITHHOLD DEBTS OWED TO **STATE** AGENCIES UNDER THE VENDOR OFFSET INTERCEPT SYSTEM FOR: (A) UNPAID CHILD SUPPORT DEBT OR CHILD SUPPORT ARREARAGES; (B) UNPAID BALANCE OF TAX, ACCRUED INTEREST, OR OTHER CHARGES SPECIFIED IN ARTICLE 21, TITLE 39, CRS; (C) UNPAID LOANS DUE TO THE STUDENT LOAN DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION; (D) OWED AMOUNTS REQUIRED TO BE PAID TO THE UNEMPLOYMENT COMPENSATION FUND; AND (E) OTHER UNPAID DEBTS OWING TO THE **STATE** OR ANY AGENCY THEREOF, THE AMOUNT OF WHICH IS FOUND TO BE OWING AS A RESULT OF FINAL AGENCY DETERMINATION OR REDUCED TO JUDGMENT AS CERTIFIED BY THE CONTROLLER.

**8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507**

THE SIGNATORIES AVER THAT TO THEIR KNOWLEDGE, NO EMPLOYEE OF THE **STATE OF COLORADO** HAS ANY PERSONAL OR BENEFICIAL INTEREST WHATSOEVER IN THE SERVICE OR PROPERTY DESCRIBED HEREIN.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT:

LESSOR:

STATE OF COLORADO:

\_\_\_\_\_  
\_\_\_\_\_  
**GOVERNOR**

\_\_\_\_\_  
**Legal Name of Contracting Entity  
Director**

By \_\_\_\_\_  
**Executive**

\_\_\_\_\_  
**Social Security Number or FEIN**

Department of \_\_\_\_\_

\_\_\_\_\_  
**Signature of Authorized Officer**

LEGAL REVIEW:

\_\_\_\_\_  
**ATTORNEY GENERAL**

\_\_\_\_\_  
**Print Name & Title of Authorized Officer**

By \_\_\_\_\_

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By \_\_\_\_\_  
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

Lessor's Address:

Lessee's Address:

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ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Lessor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

\_\_\_\_\_

By\_\_\_\_\_

Date\_\_\_\_\_

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## FINANCING PROPOSAL LETTER

PROPOSING FINANCING FIRMS: SUBMIT ON FIRM LETTERHEAD

Date

RE: <Customer>

<Lender> is pleased to submit the following financing proposal for the <Customer> energy and water savings conservation project. This proposal is being submitted in response to your request for proposals dated February \_\_\_\_, 2004.

### I. Lender Information

Lender Name:

Address:

Contact:

Telephone:

Fax:

Email:

Background: *<Lender Background -- Discuss experience in financing state projects and / or performance contracts, with attention given to experience in the state of Colorado, and what advantages your firm offers.>*

### II. Financing Structure

Purpose: Finance the energy and water savings conservation projects to be engineered, designed, constructed and commissioned by ESCO for <Customer>.

Structure: Tax-exempt Lease Purchase arrangement using the Model Lease Contract distributed with this request for proposals.

Security: First lien on the equipment  
Lessee appropriations

Proceeds: Approximately \$\_\_\_\_\_ plus capitalized interest for the \_\_\_\_\_ month construction period.

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Term: \_\_\_\_\_ months (\_\_\_\_ months of construction plus 144 months of amortization period)

Payments: Quarterly in arrears.

Prepayment: List prepayment terms / conditions / penalty

Interest Rate: \_\_\_\_\_% (This is a non-bank qualified financing)

Rate will be held until \_\_\_\_\_. After that date, the rate will be adjusted as follows:  
\_\_\_\_\_ (name and source of index).

***Example: This rate will be held until \_\_\_\_\_. After that date, the rate will float at 75 basis points over the 10 year treasury, constant maturity, as published daily in the Federal Reserve Bulletin Statistical Release H-15.***

Closing Costs: \$\_\_\_\_\_ (if any)

Escrow Account Terms: Agent name and all costs associated with opening and maintaining the escrow, including any investment management fees, if any. (***Note: Please include a copy of the escrow agreement as part of the response documents***)

Documents: A redlined copy of the Model Lease Contract is included with this response and contains the edits that we require in order to execute the agreement.

Payment and Performance

Bonds: We **do / do not** require to be named as dual obligee on the payment and performance bonds.

Other Conditions Of ESCO:

\_\_\_\_\_  
\_\_\_\_\_

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Credit Approval: The transaction **is / is not** subject to credit approval of the lender.  
*(Note: If the financing is not approved, please list requirements and time frame required for approval)*

Estimated Closing  
Date: Within 60 days of the award of the financing.

Other Requirements or conditions:

### ***III. Other Information***

Please provide any other information that you would like to share regarding your firm's qualifications, references, contacts, etc.

Thank you for the opportunity to provide this proposal. If you have any questions or would like to discuss this proposal in further detail, please let us know.

Sincerely,

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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**SIGNATURE SHEET**

ITEM: Tax-exempt lease financing for *<Customer's>* energy and water conservation projects.

ENTITY: Board of *<Customer>*

We submit a proposal to furnish the financing for the term of the contract in accordance with the specifications and schedule of supplies. I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one, which a reasonable person would think would compromise the open competitive bid process.

ADDENDA: The undersign acknowledges receipt of the following addenda:

1. Proposal letter dated \_\_\_\_;
2. Model Lease Contract – Attachment A;
3. List of energy and water savings measures and the associated capital cost – Attachment B;

Legal Name of Person, Firm or Corporation: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City & State: \_\_\_\_\_ Zip: \_\_\_\_\_

FEIN Number: \_\_\_\_\_

Please indicate taxes currently registered for in Colorado:

Corporate Income Tax [ ☐ ]; Sales Tax [ ☐ ]; Withholding Tax [ ☐ ]

Compensating Use Tax [ ☐ ]; None [ ☐ ]

The undersigned attests this bidder is not in arrears in taxes due the State of Colorado.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name of Signature: \_\_\_\_\_ Title: \_\_\_\_\_

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.



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Address\_\_\_\_\_

City & State\_\_\_\_\_ Zip Code\_\_\_\_\_

Telephone\_\_\_\_\_ Fax\_\_\_\_\_

Email\_\_\_\_\_

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### **Overview of Facility Improvement Projects**

ESCO:

Contractual

Arrangement: ENERGY PERFORMANCE CONTRACT BY AND BETWEEN ESCO  
AND BOARD OF <CUSTOMER>

Total Installed Costs: \$\_\_\_\_\_, SUBJECT TO ADJUSTMENT BASED UPON  
FINAL ANALYSIS BY ESCO

Financed Capital: APPROXIMATELY \$\_\_\_\_\_, WHICH IS THE TOTAL  
INSTALLED COSTS PLUS CAPITALIZED INTEREST FOR THE \_\_\_\_\_  
MONTH CONSTRUCTION PERIOD

Term: \_\_\_\_\_ MONTHS (\_\_\_\_\_ MONTHS OF CONSTRUCTION PLUS  
\_\_\_\_\_ MONTHS OF AMORTIZATION PERIOD)

Payments: NO MORE FREQUENT THAN QUARTERLY AND SUCH PAYMENT  
SHALL BE IN ARREARS

Projects: ENERGY AND WATER SAVINGS MEASURES INCLUDING BUT NOT  
LIMITED TO:

- ITEM 1
- ITEM 2

A MORE DETAILED DESCRIPTION OF THESE MEASURES IS  
INCLUDED WITH THIS REQUEST FOR PROPOSAL ALONG WITH AN  
ESTIMATE OF THE CAPITAL COST ASSOCIATED WITH EACH.

Anticipated Draw

Schedule: